IN THE

Supreme Court of the United States

OCTOBER TERM 1969

No. 293

FRED J. GRAHAM,

Petitioner,

V.

JAMES P. HOULIHAN, SALVATORE RUBINO, ERNEST BOOTH, JR., DONALD CASSIN, AND JAMES MCKENNA, THE REDEVELOPMENT AGENCY, AND THE CITY OF TORRINGTON,

Respondents.

BRIEF OF RESPONDENTS IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

JOHN A. METTLING
JAMES B. LEFEBRE
Attorneys for Respondents
365 Prospect Street
P. O. Box 357
Torrington, Connecticut

TABLE OF CONTENTS

	PAGE
QUESTION PRESENTED	1
COUNTER-STATEMENT OF FACTS	1
ARGUMENT	3
POINT I — The Petitioner was afforded a full opportunity to appear at the Public Hearing and to offer any evidence he had in opposition to the Redevelopment Plan	3
POINT II — The Public Hearing was properly held for the purpose of making a legislative determination of fact and Petitioner was not denied due process of law by the manner or nature of such hearing	4
CONCLUSION	8

Cases Cited

Backus v. Fort Street Union Depot Co., 169 U. S. 557 (1898)	7
Bauman v. Ross, 167 U. S. 548 (1897)	5
Berman v. Parker, 348 U. S. 26, 99 L. ed. 27 (1954)	7, 8
Bi-Metallic Inv. Co. v. State Board of Equalization, 239 U. S. 441 (1915)	6
Bragg v. Weaver, 251 U. S. 57 (1919)	7
Danforth v. United States, 308 U. S. 271, 84 L. ed. 240 (1939)	5
Gohld Realty Co. v. Hartford, 141 Conn. 135 (1954)	7
Interstate Commerce Comm. v. Louisville & N. R. Co., 227 U. S. 88 (1913)	6

PAGE

Morgan v. United States, 304 U. S. 1, 82 L. ed. 1129 (1938) 6

Morgan v. United States, 298 U. S. 468, 80 L. ed. 1288 (1913) 6

Norwegian Nitrogen Prod. Co. v. United States, 288 U. S. 294, 77 L. ed. 796 (1933) 5

Ohio Bell Tel. Co. v. Comm., 301 U. S. 292, 81 L. ed. 1093 (1937) 6

United States v. Carmack, 329 U. S. 230, 91 L. ed. 209 (1946) 6

Water Commissioners v. Johnson, 86 Conn. 151 (1912) 6

Wilson v. City of Long Branch, 27 N. J. 360 (1958); cert. denied 358 U. S. 873, 3 L. ed. 2d 104 (1959) 7

Zurn v. City of Chicago, 389 Ill. 114, 59 N. E. 2d 18 (1945) 5

Statutes Cited

Conn. Gen. Stat., 1958 Rev., Sec. 8-127 4

Conn. Gen. Stat. 1949 Rev., 1955 Supp. Sec. 490d (Now Conn. Gen. Stat. 1958 Rev., Sec. 8-132) 7

Public Law 171, 81st Cong., 63 Stat. 413, 414 (1949), Section 105 (d); 42 U.S.C.A. § 1455 (d) 5

Public Law 1020, 84th Cong., 70 Stat. 1091, 1101; 42 U.S.C.A. § 1462 (1956) 5

Text Cited

Cooley, Constitutional Limitations (8th Ed.) p. 741 5

IN THE

Supreme Court of the United States

OCTOBER TERM 1960

No. 293

FRED J. GRAHAM, *Petitioner*,

V.

JAMES P. HOULIHAN, SALVATORE RUBINO, ERNEST BOOTH, JR., DONALD CASSIN, AND JAMES MCKENNA, THE REDEVELOPMENT AGENCY, AND THE CITY OF TORRINGTON, *Respondents*.

BRIEF OF RESPONDENTS IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

QUESTION PRESENTED

Whether due process of law was denied the Petitioner by the nature of and the manner in which the Redevelopment Agency conducted the Public Hearing?

COUNTER-STATEMENT OF FACTS

The Respondents adopt the Petitioner's Statement of Facts except for the following corrections and additions.

The standards referred to in "Questions Presented" on Page 2 of the Petition, had to do with determining whether or not buildings in the area were substandard or deteriorated. (Find., Par. 31, R. p. 42), and were not the basis for the Agency's conclusion that the

area was a redevelopment area. Such finding was based on the personal knowledge of the Agency members, on information they gathered from outside sources, on personal inspection of the area, and after due deliberation. (Find., Par. 22, R. p. 41; Par. 29, R. p. 42; Par. 46, R. p. 44 and Pars. 71, 72, R. p. 46).

The Agency's consultants submitted a preliminary project report in May of 1956 which the Agency caused to be published in serial form in local newspapers (Find., Par. 16, R. p. 40). This report was made available to the public and numerous public meetings were held in connection therewith. (Find., Par. 17, R. p. 40). This was after the disastrous flood of August 19, 1955, a factor in selecting the particular site in question. (Find., Par. 21, R. p. 41). The Agency approved the preliminary project report on October 16, 1956. (Find., Par. 23, R. p. 41 and 42). The final project report was published in May of 1957 and was on file for public examination from May until October of 1957, during which time an extensive information program was conducted to publicize the plan and after which, on October 7, 1957, the voters of the city approved the expenditure of public funds for the plan by a vote of more than 2 to 1. (Find., Par. 24, R. p. 42). A public hearing on the final project report was held on October 10, 1957. (Find., Par. 25, R. p. 42). Persons, including representatives of the plaintiff Graham, (Petitioner herein), appeared and spoke in opposition to the plan, while other persons appeared and spoke in favor of it. (Find., Par. 26, R. p. 42). The plaintiff Graham's representative was heard without interruption, was accorded a second opportunity to speak, and did not seek to offer evidence or to examine or cross-examine witnesses. (Find., Par. 27, R. p. 42). The hearing was

held open for the reception by the Agency of any further pertinent information until October 15, 1957, and during this period the plaintiff did not offer nor seek to offer anything further. (Find., Par. 28, R. p. 42). Following the hearing the Agency met several times in executive session considering the pros and cons of the plan and on October 28, 1957, unanimously concluded that the area was a redevelopment area and adopted the plan of redevelopment. (Find., Par. 29, R. p. 42).

ARGUMENT

POINT I

The Petitioner was afforded a full opportunity to appear at the Public Hearing and to offer any evidence he had in opposition to the Redevelopment Plan.

Petitioner's claim is that he was denied due process because there was no presentation at the public hearing to which he could respond. This charge is unfounded in fact and in law. At the many hearings open to the public held by the Agency, at the Public Hearing with which we are herein concerned, and throughout the history of the redevelopment project, the Agency presented to the public facts, figures and evidence pertaining to the proposed redevelopment project.

The trial court found, and its finding was not challenged, that the plaintiff's representative appeared at the Public Hearing in question, spoke in opposition to the proposal and was heard without interruption; that he did not seek to offer any evidence or to examine or cross-examine any witnesses; and that the Petitioner did not avail himself of an opportunity to offer evidence thereafter, during a period when the hearing was held open to receive any further pertinent information. (Find., Pars. 27 and 28, R. p. 42).

It is clear that Petitioner had ample knowledge on which to base argument or evidence, if he had any, in opposition to the redevelopment plan. In fact, the Petitioner did not present any such evidence.

In addition the Petitioner instituted a civil suit against the Agency to determine the validity of the redevelopment project. This action was brought by a writ dated February 5, 1958. On April 14 and 15 of 1959, a trial was held. The trial court, on June 2, 1959, issued its judgment file finding all the issues for the defendants. (R. p. 26-28). Although obviously plaintiff had ample time to prepare his case thoroughly, he failed to produce any substantial evidence on the trial to show that the actions of the Agency in making its determination were unreasonable or in bad faith or in abuse of the power conferred upon it by Statute.

The trial judge summarily dismissed plaintiff's contention that the Public Hearing was unconstitutional. (R. p. 25).

POINT II

The Public Hearing was properly held for the purpose of making a legislative determination of fact and Petitioner was not denied due process of law by the manner or nature of such hearing.

Conn. Gen. Stat. Sec. 8-127 requires the holding of a public hearing on published public notice before any redevelopment plan is approved by a redevelopment agency.

The due process clause of the Fourteenth Amendment to the Federal Constitution does not guaranty any particular form of State procedure in regard to public hearings. The type of public hearing to be held

varies with the nature of the proceeding and the individual rights to be affected by it. *Cooley, Constitutional Limitations (8th Ed.) p. 741.*

Indeed it appears likely that Statutes of a State could provide for redevelopment without requiring a public hearing at all and still not be violative of the due process clause. While one of the fundamental requirements of Federal Redevelopment Law, compliance with which is necessary before a loan or grant of federal funds will be made, is that no land can be acquired except after a public hearing, *(Public Law 171, 81st Cong., 63 Stat. 413, 414 (1949), Section 105 (d); 42 U. S. C. A. § 1455 (d)*, even this requirement is abrogated in a "disaster area." *Public Law 1020, 84th Cong., 70 Stat. 1091, 1101; 42 U. S. C. A. § 1462 (1956).*

At the stage of redevelopment planning at which this public hearing was held, there had been no taking of anyone's property. A mere declaration of a desire to condemn a certain area is not a taking of property. *Danforth v. United States, 308 U. S. 271, 84 L. ed. 240 (1939); Bauman v. Ross, 167 U. S. 548 (1897).* Hence, no question of due process is involved herein. *Zurn v. City of Chicago, 389 Ill. 114, 59 N. E. 2d 18 (1945).*

The legislative intent in requiring this public hearing was to provide information to assist the Agency in making the four findings required by the statute. The situation is analogous to that of the Legislature itself holding public hearings on bills before it; or to the hearing on taking private property by eminent domain for highway purposes. *Norwegian Nitrogen Prod. Co. v.*

United States, 288 U. S. 294, 77 L. ed. 796 (1933). They are legislative questions, no matter who may be charged with their decision, and a hearing thereon is not essential to due process in the sense of the Fourteenth Amendment, as long as one is granted on the issue of just compensation. *United States v. Carmack, 329 U. S. 230, 91 L. ed. 209 (1946); Water Commissioners v. Johnson, 86 Conn. 151 (1912).*

The Petitioner urges upon the court that the public hearing herein does not meet the minimum requirements assured to every citizen by the Fourteenth Amendment, citing in support of this proposition the cases of *Ohio Bell Tel. Co. v. Comm., 301 U. S. 292, 81 L. ed. 1093 (1937); Morgan v. United States, 304 U. S. 1, 82 L. ed. 1129 (1938); Morgan v. United States, 298 U. S. 468, 80 L. ed. 1288 (1936); Interstate Commerce Comm. v. Louisville & N. R. Co., 227 U. S. 88 (1913).* But these cases are rate making, not condemnation, cases. They require a different type of public hearing. It is not necessary or desirable that the redevelopment public hearing be of the adversary type. Rather it must be a forum for the reception of positive evidence. The burden of coming forward with evidence in support or in opposition must, perforce, rest in the hands of those who wish to either support or oppose. Any other plan would result in administrative chaos, making it impossible for a redevelopment agency to propose or establish any redevelopment plan, anywhere. *Bi-Metallic Inv. Co. v. State Board of Equalization, 239 U. S. 441 (1915).*

In the instant situation it has been established beyond a doubt that redevelopment laws are constitutional and that redevelopment is for a public purpose. *Gohld Realty Co. v. Hartford, 141 Conn. 135 (1954); Berman v. Parker, 348 U. S. 26, 99 L. ed. 27 (1954).* The question to be resolved at the public hearing is to determine whether private property should be taken for a public purpose, i.e., redevelopment, and the extent of that acquisition. Such a question requires a legislative determination of fact and, thereafter, a determination of the amount of damages to be paid to the property owner for the taking. The due process requirement of the Constitution is fully satisfied if the property owner is given a full hearing on the question of compensation. *Bragg v. Weaver, 251 U. S. 57 (1919); Backus v. Fort Street Union Depot Co., 169 U. S. 557 (1898).* The Connecticut redevelopment statutes give a property owner a right of appeal from the agency's decision to the courts on that issue. *Connecticut General Statutes 1949 Rev., 1955 Supp., Sec. 490d (Now Connecticut General Statutes 1958 Rev., Sec. 8-132).*

In a similar situation, the New Jersey court questioned whether due process required a public hearing at all. The court held that the legislative character of the proceedings did not require an adversary type hearing. *Wilson v. City of Long Branch, 27 N. J. 360 (1958); cert. denied, 358 U. S. 873, 3 L. ed. 2d 104 (1959).*

The plaintiff was accorded a "fair hearing" as required by law; *Gohld Realty Co. v. Hartford, 141*

Conn. 135 (1954). "The rights of these property owners are satisfied when they receive that just compensation which the Fifth Amendment exacts as the price of the taking." *Berman v. Parker, 348 U. S. 26, 36, 99 L. ed. 27, 39.*

For these reasons the Respondents herein believe the instant Petition raises no substantial federal question.

CONCLUSION

For the foregoing reasons it is respectfully submitted that the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

JOHN A. METTLING,
JAMES B. LEFEBRE,
Attorneys for the Respondents.